



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

April 15, 2003

Ms. Doreen L. Wheeler
Assistant General Counsel
Office of Consumer Credit Commissioner
2601 North Lamar Boulevard, 2nd Floor
Austin, Texas 78705

OR2003-2538

Dear Ms. Wheeler:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 179389.

The Office of Consumer Credit Commissioner (the "commissioner") received a request for all paperwork the commissioner has on a named entity. You claim that portions of the submitted information are excepted from disclosure under sections 552.101, 552.111, 552.130, 552.136, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the representative samples of submitted information.¹

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," including information that is protected by the common-law right of privacy. Common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), cert. denied, 430 U.S. 931 (1977). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* includes information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and

¹We assume that the "representative samples" of records submitted to this office are truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

injuries to sexual organs. *Id.* at 683. The information marked by the commissioner as private in Attachments I1 through I4 does not meet the test set out in *Industrial Foundation*. Accordingly, we mark this information for release.

However, this office has also determined that some personal financial information is highly intimate or embarrassing and thus meets the first part of the *Industrial Foundation* test. Open Records Decision Nos. 600 (1992) (personal financial choices concerning insurance are generally confidential), 545 (1990) (common-law privacy protects personal financial information not relating to the financial transaction between an individual and a governmental body), 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information), 373 (1983) (common-law privacy protects assets and income source information). Under *Industrial Foundation*, when an individual's personal financial choices are involved, this office ordinarily seeks to protect the privacy of the individual by withholding information relating to the individual's personal financial choices. However, in this case, as you have released this information to the requestor, withholding information relating to the individual's personal financial choices would not preserve the common-law privacy rights of the individuals, as you acknowledge. Accordingly, to protect the privacy of the individuals to whom the information relates, we agree that you must withhold under section 552.101, with the exception of the information that we have marked for release, the types of personal financial information you have marked within the submitted documents that identifies the individual at issue.

You next argue that social security numbers contained in the submitted information are confidential under section 552.101. Section 552.101 encompasses information protected by other statutes, such as section 56.001 of the Occupations Code, which provides as follows:

The social security number of an applicant for or holder of a license, certificate of registration, or other legal authorization issued by a licensing agency to practice in a specific occupation or profession that is provided to the licensing agency is confidential and not subject to disclosure under Chapter 552, Government Code.

Occ. Code § 56.001.² You state that the social security numbers at issue here belong to principals of applicants for licenses issued by the commissioner, a licensing agency, and that the numbers were provided to the commissioner for licensing purposes in connection with the specified occupation licensed. Accordingly, we find that you must withhold the types of social security numbers that you have marked under section 56.001 of the Occupations Code, as encompassed by section 552.101.

²The language of section 56.001 of the Occupations Code corresponds in substance to the language of the former note to section 51.251 of the Occupations Code. House Bill No. 2812, which enacted section 56.001, also repealed the note to section 51.251. See Act of May 22, 2001, 77th Leg., R.S., § 14.001(b), 2001 Tex. Sess. Law Serv. 3970, 4098 (Vernon's) (repealing section 1, chapter 314, Acts of the 76th Legislature, Regular Session, 1999).

You next argue that the submitted materials include fingerprint information subject to sections 559.001, 559.002, and 559.003 of the Government Code, which provide as follows:

Sec. 559.001. DEFINITIONS. In this chapter:

- (1) "Biometric identifier" means a retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry.
- (2) "Governmental body" has the meaning assigned by Section 552.003 [of the Government Code], except that the term includes each entity within or created by the judicial branch of state government.

Sec. 559.002. DISCLOSURE OF BIOMETRIC IDENTIFIER. A governmental body that possesses a biometric identifier of an individual:

- (1) may not sell, lease, or otherwise disclose the biometric identifier to another person unless:
 - (A) the individual consents to the disclosure;
 - (B) the disclosure is required or permitted by a federal statute or by a state statute other than Chapter 552 [of the Government Code]; or
 - (C) the disclosure is made by or to a law enforcement agency for a law enforcement purpose; and
- (2) shall store, transmit, and protect from disclosure the biometric identifier using reasonable care and in a manner that is the same as or more protective than the manner in which the governmental body stores, transmits, and protects its other confidential information.

Sec. 559.003. APPLICATION OF CHAPTER 552. A biometric identifier in the possession of a governmental body is exempt from disclosure under Chapter 552.

It does not appear to this office that section 559.002 permits the disclosure of the submitted fingerprint information. Therefore, the commissioner must withhold the types of fingerprint information that you have marked under section 552.101 in conjunction with section 559.003 of the Government Code.

You argue that an applicant's criminal history background information is confidential under section 14.154 of the Finance Code. Section 14.154 of the Finance Code provides, in relevant part:

(a) Criminal history record information received by the [commissioner] is confidential and is for the exclusive use of the [commissioner].

(b) Except on court order or as provided by Section 14.155(a), the information may not be released or otherwise disclosed to another person.

Fin. Code § 14.154(a), (b). The commissioner is obligated to obtain criminal history record information ("CHRI") maintained by the Department of Public Safety ("DPS"), the Federal Bureau of Investigation Identification Division ("FBI"), or another law enforcement agency relating to an applicant for a license issued by the commissioner or a person licensed under the commissioner's authority. Fin. Code § 14.151 (a), (b). You indicate that a portion of the submitted information is criminal history record information that was received by the commissioner. Based on your comments and our review of the submitted information, we conclude that most of the information you have marked as CHRI constitutes criminal history record information that was received by the commissioner from the DPS, FBI, or other law enforcement agency. *See* Gov't Code § 411.082(2) (defining CHRI). However, we have marked some information that you seek to withhold that does not constitute CHRI obtained from the DPS, FBI, or other law enforcement agency, and therefore is not confidential under section 14.154. With the exception of the information we have marked for release, the commissioner must withhold the types of information that it has marked under section 552.101 in conjunction with section 14.154 of the Finance Code.³

You also argue that section 552.111 excepts portions of the submitted information from disclosure. Section 552.111 excepts from disclosure "an interagency or intra-agency memorandum or letter that would not be available by law to a party in litigation with the agency." This exception applies not only to internal memoranda, but also to memoranda prepared by consultants of a governmental body. Open Records Decision Nos. 462 at 14 (1987), 298 at 2 (1981). In Open Records Decision No. 615 (1993), this office reexamined the predecessor to the section 552.111 exception in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.—Austin 1992, no writ), and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. *City of Garland v. Dallas Morning News*, 22 S.W.3d 351, 364 (Tex. 2000); *Arlington Indep. Sch. Dist. v. Texas Attorney Gen.*, 37 S.W.3d 152 (Tex. App.—Austin 2001, no pet.). An agency's policymaking functions do not encompass internal administrative or personnel matters; disclosure of information relating to such

³We note that it does not appear that any of the exceptions to confidentiality listed in section 14.155(a) apply.

matters will not inhibit free discussion among agency personnel as to policy issues. ORD 615 at 5-6. Additionally, section 552.111 does not generally except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. *Arlington Indep. Sch. Dist.*, 37 S.W.3d at 160; ORD 615 at 4-5. Based on our review of the submitted information, we find that you have demonstrated the applicability of section 552.111 to portions of the submitted information. Thus, the commissioner may withhold from disclosure the portions of the submitted information that it has marked under section 552.111.

You next assert that the responsive information may include Texas driver's license numbers and vehicle identification numbers excepted from disclosure under section 552.130. Section 552.130 of the Government Code excepts from public disclosure information relating to a driver's license or motor vehicle title or registration issued by an agency of this state. Accordingly, you must withhold from the responsive information any Texas driver's license numbers and vehicle identification numbers pursuant to section 552.130.

You also note that the submitted documents contain account numbers that are subject to section 552.136 of the Government Code. Section 552.136 makes certain access device numbers confidential and provides in pertinent part:

(a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

(1) obtain money, goods, services, or another thing of value;

(2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.

Gov't Code § 552.136. Accordingly, with the exception of the information we have marked for release, the commissioner must withhold the types of account numbers that it has marked pursuant to section 552.136 of the Government Code.

Lastly, the commissioner acknowledges that the submitted documents contain e-mail addresses obtained from the public. Section 552.137 makes certain e-mail addresses confidential. Section 552.137 provides:

(a) An e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under this chapter.

(b) Confidential information described by this section that relates to a member of the public may be disclosed if the member of the public affirmatively consents to its release.

Gov't Code §552.137. You do not inform us that a member of the public has affirmatively consented to the release of any e-mail address contained in the submitted materials. The commissioner must, therefore, withhold the types of e-mail addresses of members of the public that it has marked under section 552.137. We note that section 552.137 does not apply to a business' general e-mail address or to a government employee's work e-mail address and we have marked such addresses for release.

In summary, you must withhold under section 552.101 and common-law privacy, with the exception of the information that we have marked for release, the types of personal financial information that identifies the individual at issue that you have marked. The social security numbers of applicants for licenses issued by the commissioner are excepted from disclosure under section 552.101 in conjunction with section 56.001 of the Occupations Code. Fingerprints in the responsive documents must be withheld from disclosure under section 552.101 in conjunction with section 559.003 of the Government Code. With the exception of the information we have marked for release, the commissioner must withhold the CHRI that it has marked under section 552.101 of the Government Code. The commissioner may withhold from disclosure the portions of the submitted information that it has marked under section 552.111. Texas driver's license numbers and vehicle identification numbers within the requested documents must be withheld under section 552.130. Finally, with the exception of the information we have marked for release, the commissioner must also withhold the types of account numbers that it has marked under section 552.136, as well as the types of public e-mail addresses that it has marked under section 552.137. The remaining information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the

governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script that reads "Heather Ross".

Heather Pendleton Ross
Assistant Attorney General
Open Records Division

HPR/sdk

Ref: ID# 179389

Enc: Submitted documents

c: Ms. Elizabeth B. Taylor
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(w/o enclosures)